

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE S/SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.64/RJT/2016
Assessment Year : 2014-15**

M/s.J.M. Baxi & Co Chetna Chambers 3 rd Floor, Rom No.307-312 Plot No.38, Sector 9 Gandhidham 370 201.	Vs	Income-Tax Officer (International Taxation) Gandhidham.
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(Applicant)		(Responent)
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Assessee by :	Shri Deepak Rindani, AR
Revenue by :	Shri S.S. Rathi, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/05/2022
घोषणा की तारीख /Date of Pronouncement: 22 /06/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the assessee against order dated 15.12.2015 passed by the Commissioner of Income-tax (Appeals)-13, Ahmedabad relating to the same Asst.Year 2014-15.

2. Brief facts of the case is that the assessee-agent, M/s.J.M. Baxi & Co., had filed provisional return for the vessel M.V. Daebo Shanghai arrived at the port of Kandla on 16.4.2013 for being freight beneficiary of M/s.J.&J Maritime Pte Ltd of Singapore without paying freight tax and had claimed tax benefit under the Double Taxation Avoidance Agreement (“DTAA”) with Singapore. The Id.AO passed an order under section 172(4) of the Income Tax Act, 1961

("the Act" for short) holding that total freight charges collected of Rs.1,66,50,480/- was taxable and determined total income of Rs.12,48,786/- which was 7.5% of the freight collected by the assessee. The AO also denied claim of DTAA benefit for 100% tax exemption claiming that owner of vessel M/s.Daebo International Shipping Co. Ltd. and owner of vessel had nominated M/s.J.J Maritime Pte Ltd., Singapore vide a letter dated 16.4.2013. As the vessel belonged to a person in Korea, DTAA between India and Singapore will not be applicable, and thereby raised tax demand of Rs.5,27,362/-. Aggrieved against the same, the assessee filed appeal before the ld.CIT(A)-13.

3. During the appellate proceedings, the assessee submitted that J&J Maritime Pte Ltd., Singapore is the agent for the vessel M.V. Daebo Shanghai. Freight charges remitted to J&J Maritime Pte Ltd., Singapore, but copy of the bank statement could not be produced before the AO as the agent had to ask it from their principal and the AO could not give time, as the assessment was getting time barred. The AO issued notice in the month of December, 2014 seeking documentary evidence including bank statement. As the Principal Office was closed due to Christmas vacation, the same could not be produced before the AO. However, the same has been produced before passing of) assessment order u/s.172(4) by the AO. The ld.CIT(A) held that the assessee has not filed bank statement before the AO, and also not submitted copy of incorporation and tax residency certificate of the owner of the vessel i.e. M/s.Daebo International Shipping Co. Ltd. Thus, the AO was correctly withdrawn DTAA benefit and has rightly taxed the freight income by raising a demand of Rs.5,27,362/- and thereby confirmed the demand and dismissed the appeal filed by the assessee.

4. Aggrieved against the same, the assessee before us raised the following grounds and also additional grounds, as follows:

"A. Reg. Additional Legal Ground and Prayer dt. 08-03-2022:

1. *Appellant has been assessed u/s 172(4) as an agent' of non-resident in respect of income from shipping business India: hence it is an "eligible assessee" to which provisions of sap 144C would apply,*

2. *Order u/s 172(4) is also an 'assessment order'*

- Emirates Shipping Line FZE v. Asstt. DIT12012] 349 ITR 493/211 Taxman 82/23 taxmann.com 400 (Delhi) (copy enclosed)

3. *As the impugned order is passed without following the statutory provisions of sec. 144C, it is non est, bad in law ipso facto and to be quashed.*

- CIT vs. C-SAM (India) Pvt, Ltd. (2017) 398 ITR 182 (Guj,) (copy enclosed) (orders of two other high courts are also referred to in this judgment)

B. Reg. Additional evidence prayer dt. 26-08-2021:

1. *For reasons stated in the prayer, evidence by way of bank statement be considered as proof of receipt of freight in bank account of the freight beneficiary in Singapore (page 85-87),*

2. *The evidence is strictly, not an additional, new evidence; it is the full-month bank statement as against shorter statement submitted in assessment; hence it is supportive evidence which confirms the document filed earlier.*

C. Reg. ground of merits of addition of Rs.1,66,50,480/-

1. *Documents filed adequately show that J & J Maritime; Pte. Ltd. - a Singapore based company and a tax resident (page 10-13) was the nominee of the Ship Owner Oaebo International Shipping Co. Ltd. - Korea (page 36-37).*

2. *There is evidence that J & J Maritime- a Singapore tax resident was the freight beneficiary of the freight paid by and for the shipment of Gokul Refoils-India (page 66); it received the freight in its Singapore bank account (page 85);*

3. *The freight invoice was also raised on Gokui Refoils - India by J & J Maritime and not by Daebo Ltd. - Korea,*

4. The Ship named 'M. V. Daebo Shanghai' was time-chartered by J & J Maritime from Daebo International-Korea (page 74); Bill of Lading is signed for J & J and not Daebo-Korea (page 18); vessel fixture terms were contracted in writing between J & J Maritime-Singapore and Gokul Refoils (page 59-62), which further proves the legal status of J & J - its not signed by Daebo-Korea; it is only described as the owner of the particular vessel,

5. Appellant, as agent of non-resident of J & J Maritime-Singapore filed the provisional return (page 58) as also the final return u/s 172(3) with the ITO (Intl. Taxation)-Gandhidham (page 14-15); certificate u/s 172(6) is issued by ITO in name of J & J Maritime-Singapore.

6. Hence, the India-Singapore tax treaty (Article 8) (enclosed herewith) is rightly claimed to apply, -under which shipping income of an enterprise of Singapore is not taxable in India.

D. Assessment order u/s 172(4) is wrongly passed on the Appellant as agent of Daebo Ltd. - Korea without notice:

1. The vessel M. V. DEABO SHANGHAI was chartered by J & J Maritime-Singapore and was run by it and not by Daebo Ltd. -Korea (page 74). Shipment and freight transactions were made by J & J (agent: this Appellant) and not by Daebo Ltd. -Korea; Appellant acted as the agent of J & J and not of Daebo; assessment order is wrongly passed on Appellant as agent of Daebo and that too without a specific notice as mandated by 163(2) of the Act. On this ground also, the order is bad in law.

E Rejoinder to Sr. DR's written submissions:

1. The word OWS on page 37 is a short form of "Owners" and not what is stated by the DR.

2. The Time Charter agreement is in a standard govt. format; it is not required to be signed by any govt.; it is an agreement between two private parties in a standard format; no govt. stamp, is required; moreover, it is validly acted upon by actual conduct; its not even rejected by lower authorities.

3. Other points raised by the ITO in written submissions dt. 02-03-2022 stand rebutted by the above."

5. During the course of hearing, the Id.AR, Shri Deepak Rindani submitted that the assessee also produced copy of the bank statement of OCBC wherein J&J Maritime Pte Ltd., Singapore was operating its accounts and establishing that the freight beneficiary was resident of Singapore, though the vessel belonged to Korean

Company in support of addition grounds. Thus, the assessee claimed that tax benefit under DTAA with Singapore is applicable and freight income is not taxable in India.

6. The Id.DR appearing for the Revenue has no serious objection of entertaining additional grounds and evidence placed before us. However, these being new evidence, the case be sent back to the AO for fresh adjudication.

7. We have heard both the parties and gone through the assessment order as well as appellate order. We find that the assessee could not produce the bank statement before the lower authorities. For the first time, the assessee is producing the bank statement and other evidences relating to ship business. Without going into the merits of the case, and the documents placed by the assessee, we deem it fit to set aside the matter back to the AO, to reconsider the same afresh and pass a speaking order in accordance with law by giving proper opportunity to the assessee, to establish its case. Needless to say, the assessee shall cooperate with the AO in passing a final assessment order. With this direction, the appeal filed by the assessee is allowed for statistical purpose.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 22nd June, 2022 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 22/06/2022